Delaware case following the Massachusetts cases awards to the remainderman stock representing additions to the corporation's plant made from earnings since the creation of the trust fund. *Bryan* v. *Aikin*, 82 Atl. 817 (Del.).

Any rule must have as its basis the intent of the grantor or testator.[6] In general it would seem that the grantor or testator regards as the *corpus* the undivided interest, represented by the stock certificates, in the assets of the corporation at the time of the creation of the trust, and as income any earnings of the total corporate assets of which this *corpus* is an undivided fraction which may be distributed by the corporation. Logically, then, the "Pennsylvania" rule would seem correct in denying to the life tenant such part of the dividend as represents earnings previous to the creation of a trust fund. There are serious practical difficulties, however, in the application of this theory which have influenced many courts.[7] The Pennsylvania court itself has adopted the practical expedient of giving to the remainderman only so much as is necessary to compensate him for any depreciation in the value of the original trust fund.[8] The issue of stock dividends presents a further difficulty. The interest of the shareholder in the corporate funds after such issue remains the same. Only the evidences of his interest have been changed and in reality no distribution of earnings has been made.[9] In this regard the "Massachusetts" rule would seem preferable. Even if the view that stock dividends are substantially distributions of funds is accepted, the practice of the courts following the "Pennsylvania" and "New York and Kentucky" rules is still open to objection. The new stock conveys an interest not only in the earnings which its issue capitalized, but also in the old capital. The benefit of any enhancement in value of the original capital thus inures to the life tenant, — a benefit to which he is obviously not entitled under any view.[10] Neither the "Pennsylvania" nor the "New York and Kentucky" rule then seems free even from theoretical difficulties. The "Massachusetts" rule, though open to some objections, has the great advantage of affording a simple working rule for the guidance of trustees.

POLICE POWER AND INTERSTATE COMMERCE. — The power to provide for the peace, health, morals, and safety of society comprises what are in fact the ultimate aims of government. All activity, not excepting interstate commerce, must be under its domain. It is conceivable that the federal government might exercise it as incidental to some express power conferred upon it. But because of the intimate relation of the subjects of this power to the welfare of each community, and the necessarily

were made. Richardson *v.* Richardson, 75 Me. 570. Minnesota makes no distinction between stock and cash dividends. Goodwin *v.* McGaughey, 108 Minn. 248, 122 N. W. 6. The Supreme Court of the United States, Rhode Island, and Virginia adopt that part of the "Massachusetts" rule by which stock dividends are regarded as a part of the *corpus*. Gibbons *v.* Mahon, 136 U. S. 549; Brown *v.* Larned, 14 R. I. 371. *Cf.* Kaufman *v.* Charlottesville Woolen Mills, 93 Va. 673, 25 S. E. 1003.

[6] Gibbons *v.* Mahon, *supra*.

[7] Irving *v.* Houstoun, *supra*; Lyman *v.* Pratt, *supra*.

[8] Boyer's Appeal, 224 Pa. 144, 73 Atl. 320.

[9] Boardman *v.* Mansfield, *supra*.

[10] Carter *v.* Crehore, 12 Hawaii 309.

different conditions demanding a diversity of application in different communities, the natural seat of the police power is in the state governments. To what extent, by conferring on Congress the power to regulate interstate commerce, the Constitution has removed this activity from the sphere of the police power as exercised by the state, has been the subject of much confusion.

Where Congress has not expressly acted,[1] the rule was early laid down [2] that where the subject matter in question required uniformity the silence of Congress demanded its freedom from interference by state action; but that in matters where uniformity is not required it should be interpreted as sanctioning such interference to a certain extent. Whatever meaning this classification may have had was at least obscured by the case of Leisy *v.* Hardin,[3] which held that a state statute forbidding the sale of liquor was void as to that sold in the "original packages," because liquor was a subject of commerce and its transportation therefore was a matter as to which there must be uniformity. And yet the transportation of oleomargarine, a healthful, nutritious food, which, although colored to resemble butter, contained nothing deleterious, is held to be a subject not requiring uniformity.[4] Such a distinction is difficult to understand. It would seem that the sale of liquor, whether in the "original packages" or not, was particularly a matter as to which local regulation should prevail. Congress seemed to confirm this view in passing the Wilson Act,[5] whereby the states were expressly empowered to make their own regulations as to the sale of liquor whether affecting interstate commerce or not.[6] In short, without a clearer definition of subjects requiring uniformity such a classification seems of little value.

There must be police power and it must reside in the states. It must necessarily at times affect interstate commerce the control of which has been vested in Congress. As in many questions of constitutional law, no definite rules can be laid down as to what interference is permissible. The importance and necessity of the police regulation on the one hand, which includes the question whether its scope exceeds the exigencies of the case,[7] and on the other hand the extent of its encroachment on interstate commerce,[8] must be regarded. Statutes discriminating against in-

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[1] Of course where Congress has expressly undertaken to regulate any subject of interstate commerce, all interference by the states is clearly forbidden.

[2] Cooley *v.* Board of Wardens of Port of Philadelphia, 12 How. (U. S.) 299.

[3] 135 U. S. 100, 10 Sup. Ct. 681.

[4] Plumley's Case, 156 Mass. 236.

[5] 26 U. S. STAT. AT LARGE, 313, c. 728. The constitutionality of this act was sustained. *In re* Rahrer, 140 U. S. 545, 11 Sup. Ct. 865.

[6] Leisy *v.* Hardin is still law, however, in so far as it has not been affected by the Wilson Act. Louisville & Nashville R. Co. *v.* Cook Brewing Co., 223 U. S. 70, 32 Sup. Ct. 189.

[7] Railroad Co. *v.* Husen, 95 U. S. 465.

[8] Inspection laws are usually constitutional. McLean & Co. *v.* Denver & Rio Grande R. Co., 203 U. S. 38, 27 Sup. Ct. 1; Savage *v.* Jones, 32 Sup. Ct. 715; Standard Stock Food Co. *v.* Wright, 32 Sup. Ct. 784. And so quarantine laws. Morgan's Steamship Co. *v.* Louisiana Board of Health, 118 U. S. 455, 6 Sup. Ct. 1114. Statutes have been upheld forbidding the running of freight trains on Sunday, Hennington *v.* Georgia, 163 U. S. 299, 16 Sup. Ct. 1086; requiring the licensing of all engineers, Smith *v.* Alabama, 124 U. S. 465, 8 Sup. Ct. 564; requiring trains to whistle and slow down at crossings, Southern Ry. Co. *v.* King, 217 U. S. 524, 30 Sup. Ct. 594. Statutes have been held unconstitutional requiring interstate trains to stop at county seats, Illinois

terstate matters are clearly objectionable.[9] The intent of the legislature should be considered to a certain extent as to whether its primary object is a purely police regulation or a regulation of commerce.[10] A recent case held a statute requiring the marking of convict-made goods to be an unconstitutional interference with interstate commerce. *In re Opinion of the Justices*, 98 N. E. 334 (Mass.).[11] Since laws which discriminate against convict-make goods have been held an invalid exercise of the police power under the Fourteenth Amendment,[12] this holding seems unquestionable. For even although a statute may be justified by the police power as due process of law under the Fourteenth Amendment [13] it must be more clearly a necessary exercise of the police power to justify any interference with interstate commerce.[14] Subject to these various considerations the question must be asked in each individual case: Has the interference with interstate commerce been unreasonable? This question must be answered by the court on the particular state of facts presented.

APPORTIONMENT OF INSURANCE BETWEEN COMPOUND AND SPECIFIC POLICIES. — A provision frequently found in insurance policies limits the liability of the insurance company to such proportion of the loss as the amount insured by its policy shall bear to the whole insurance on the property.[1] By the weight of authority, such a clause in a policy on certain property applies where the insured holds also a compound policy covering the same and additional property.[2] The precise basis on which the proportion referred to in such a clause shall be determined is a subject of irreconcilable conflict, because of the difficulty in fixing the amount to which the property covered by the specific policy is insured by the blanket policy.[3]

Of the rules suggested for determining this amount, some apparently proceed on the theory that the underwriter is entitled to regard as insuring the property covered by the specific policy, all insurance under which recovery could be had for a loss on that property. This theory is carried to an extreme in the rule fixing the amount at the face value of the blanket policy, when there has been a loss only on the property

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Central R. Co. *v.* Illinois, 163 U. S. 142, 16 Sup. Ct. 1096; requiring railroads to furnish freight cars within certain time after notice unless a strike or public calamity prevents, Houston and Texas Central R. Co. *v.* Mayes, 201 U. S. 321, 26 Sup. Ct. 491.

[9] Welton *v.* Missouri, 91 U. S. 275; Walling *v.* Michigan, 116 U. S. 446, 6 Sup. Ct. 454.

[10] See 1 HARV. L. REV. 159.

[11] People *v.* Hawkins, 157 N. Y. 1, 51 N. E. 257.

[12] People *v.* Raynes, 136 N. Y. App. Div. 417, 120 N. Y. Supp. 1053; aff'd in 198 N. Y. 539, 622, 92 N. E. 1097.

[13] Powell *v.* Pennsylvania, 127 U. S. 678, 8 Sup. Ct. 992, 1257.

[14] Schollenberger *v.* Pennsylvania, 171 U. S. 1, 18 Sup. Ct. 757.

[1] Such a provision is clearly enforceable if the total insurance exceeds the loss. German Ins. Co. *v.* Heiduk, 30 Neb. 288, 46 N. W. 481. If the loss is greater than the whole amount of the several policies, each insurance company is liable to pay the insured the whole amount of its policy. Erb *v.* Fidelity Ins. Co., 99 Ia. 727, 69 N. W. 261. But it may be otherwise provided. Angelrodt *v.* Delaware Mutual Ins. Co., 31 Me. 593.

[2] Ogden *v.* East River Ins. Co., 50 N. Y. 388, overruling Howard Ins. Co. *v.* Scribner, 5 Hill (N. Y.) 298. *Contra*, Clarke *v.* Western Assurance Co., 146 Pa. 561, 23 Atl. 248. *Cf.* Storer *v.* Eliot Fire Ins. Co., 45 Me. 175.

[3] See 4 COOLEY, BRIEFS ON INSURANCE, 3111 *et seq.*